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09/644,777	08/23/2000	Roger P. Jackson	10 , 033	1641

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EXAMINER

PATEL, YOGESH P

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/644,777
Filing Date: August 23, 2000
Appellant(s): JACKSON, ROGER P.

John C. McMahon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/15/2008 appealing from the Office action mailed 12/26/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,296,642	Morrison et al.	10-2001
5,499,892	Reed	3-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1-7, 9-10, 12-26 and 50-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Morison et al. (USPN 6,296,642). Morrison et al. discloses a medical implant with head 11, spaced arms and, a "closure member 12 adapted to be threadedly engaged" having a "generally cylindrical" portion, a clear implication that the threads are helically wound about the body of the implant in a continuous manner (column 3, lines 50 & 66). In column 3, lines 54-59, Morrison et al further disclose a second implant, "a receiver member 11" which "includes a longitudinal or thread axis". This device also includes "a transverse channel 16 for receiving an elongated member, which is generally perpendicular to axis 14 and bore 15". In lines 35-42 of column 4; Morrison et al disclose that "threads 44 and 46 are reverse angle threads" meaning that the "rearward-facing thread surface" is "sloped so that, for a given cross-section of the thread through the longitudinal axis of the screw, a point is closer to the distal or forward end of the screw than a point on the rearward-facing thread surface at the crest of the thread". Further, with respect to Claims 2-6, "in one particular embodiment of the present invention, illustrated in Fig. 4, pressure angle α is -5 degrees, and flank angle β is 45 degrees. However, it is understood that one of ordinary skill in the art would recognize that other negative values of pressure angle α , including values between about -1 degree and at least -40 degrees, and other values of flank angle β are within the scope of the present invention. As noted above, reverse angle thread 44 of receiver member 11 is configured substantially similarly to reverse angle thread 46 of

Art Unit: 3732

closure member 12 so that threads 44 and 46 can be engaged" (col. 4, lines 64-67 & col. 5, lines 1-7). In addition, "channel 16 is bounded on both sides by legs 20 of receiver member 11". In regards to Claims 14-16, as shown in Figures 1-3 of Morrison et al, the leading and trailing surfaces are spaced at substantially the same radius creating a generally obtuse triangular cross-section. Referring again to the Figures presented by Morrison et al, it is clear that Claims 21 are anticipated by Figures 1-3 where β and α are shown to create a cross-section generally triangular in shape.

Claim Rejections - 35 USC § 103

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison et al in view of Reed (USPN 5,499,1892). Morrison et al discloses the claimed invention except for the threadform is a discontinuous helical pattern. Reed teaches a threadform with a helical discontinuous pattern. It would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the helical discontinuous pattern of the threadform taught by Reed into the threaded implant disclosed by Morrison et al in order to prevent easy removal of the closure from the implant thereby providing an increased interference fit.

(10) Response to Argument

On page 13 of the appeal brief, Appellant argued that the three Declarations (as provided in Appeal Brief, page 29) supports conception and reduction to practice before the effective date of Morrison et al. The Examiner disagrees because in previous office action mailed 12/26/2007 it was explained that there is insufficient evidence to establish that the present invention was invented prior to the Morrison filing date. There is

Art Unit: 3732

insufficient evidence provided that supports a reduction to practice prior to the effective filing date of the Morrison reference. In all of the three Declarations, Appellant failed to show the claimed invention in terms of reduction to practice. For example, on page 38 of the Appeal Brief, Exhibit A fails to show a closure having a threadform comprising a leading surface having an inner edge and an outer edge and a trailing surface that has an inner edge and an outer edge as the Appellant shows in figure 3 of his application. Further, in Exhibit C of page 40 of the Appeal Brief, the closure is structurally different than the closure of figure 3 of his application. Same applies to Exhibit K on page 48. Further, on page 58, Exhibit 2 fails to show a closure having a threadform comprising a leading surface having an inner edge and an outer edge and a trailing surface that has an inner edge and an outer edge as the Appellant shows in figure 3 of his application and it is not clear how this closure would properly work with the claimed medical implant since there is no structure on the closure to engage with the medical implant as shown in figure 3. Furthermore, Exhibit 5 on page 61 of the Brief is structurally different than claimed what is disclosed in the instant application.

For the reasons above, the Examiner believes that insufficient evidence was provided that supports a reduction to practice prior to the effective filing date of the Morrison reference.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3732

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Yogesh Patel/

Conferees:

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

/Thomas C. Barrett/
Supervisory Patent Examiner, Art Unit 3775